

July 22, 2016

SUBMITTED VIA FOIA ONLINE

Regional Freedom of Information Officer
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

**Re: Freedom of Information Act Request Concerning EXXONMOBIL EVERETT
TERMINAL 52 BEACHAM ST, EVERETT, MA 02149 FRS ID: 110000736801**

Dear Sir or Madam:

The Conservation Law Foundation (“CLF”) hereby requests the records described below pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.* CLF requests disclosure of all requested records including any and all nonexempt portions of records that are otherwise determined to be exempt from review under the FOIA pursuant to 5 U.S.C. §552(b). *Wightman v. Bureau of Alcohol, Tobacco & Firearms*, 755 F.2d 979, 983 (1st Cir. 1985). The requested records relate to ExxonMobil’s Everett Terminal in Everett, Massachusetts (EXXONMOBIL EVERETT TERMINAL, 52 BEACHAM ST, EVERETT, MA 02149 (FRS ID: 110000736801)).

Specifically, CLF requests the EPA provide the following:

1. All records concerning draft and final NPDES permits and permit modifications; public comments and responses to public comments; and related documents including internal EPA documents; associated with the ExxonMobil Everett Terminal that have been prepared, released for public comment, and/or issued since 2000.
2. All Discharge Monitoring Reports (DMRs) for all outfalls at ExxonMobil’s Everett Terminal from January 2010 through the present.
3. All records and data concerning continuous flow monitoring data, including but not limited to data from: data loggers at ExxonMobil’s Everett Terminal; process flow meters (also referred to as system flow meters) FE/FT-101, FE/FT-206, FE/FT-207, FE/FT-301, FE/FT-404, and FE/FT-404 at ExxonMobil’s Everett Terminal; all records, data, and chart records from the Yokogawa chart recorder at ExxonMobil’s Everett Terminal; and all correspondence concerning continuous flow monitoring data.
4. All records concerning any requests by the EPA Regional Administrator to extend the retention period of any monitoring data generated by ExxonMobil’s Everett Terminal.
5. All records concerning 10 ug/l for PAHs as a “compliance/non-compliance level” “minimum level” or “detection limit” at Everett Terminal Outfall 01A (formerly 0001).

This request includes, but is not limited to, all records relating to improvements in the detection capability of analytical equipment leading to an increased ability to detect PAHs at lower analytical detection levels than was possible in 1991, and all records (including internal agency memoranda and agency correspondence) concerning whether to modify the 10 ug/l detection limit in light of improvements in the detection capability of analytical equipment.

6. All correspondence between Region 1 EPA staff and ExxonMobil and/or ExxonMobil's agents and representatives since the filing of CLF's first FOIA request on November 12, 2015, including but not limited to letters, emails, and phone logs.
7. All records concerning any ECHO summary report showing the Everett Terminal (FRS ID: 110000736801) as having Clean Water Act Violations during the last 12 quarters, including but not limited to the data underlying any summary report(s), records concerning EPA's process for generating and/or modifying any summary report(s), and all correspondence (including phone logs) between Region 1 EPA staff and the permittee (including ExxonMobil agents and representatives) regarding modifications or corrections to any summary report(s).
8. All records concerning EXXONMOBIL EVERETT TERMINAL 52 BEACHAM ST, EVERETT, MA 02149 (FRS ID: 110000736801) prepared or received by EPA from March 2016 through the present.

CLF believes that these records reside primarily with the EPA Region 1 Office of Ecosystem Protection in either the Water Quality Branch or the Surface Water Branch, although additional branches, such as the Office of Regional Counsel or Resource Conservation and Recovery Act Enforcement Program, may possess records responsive to this request. CLF looks forward to a response and determination from your office within twenty working days of receipt of this request consistent with 5 U.S.C. § 552(a)(6) and 40 C.F.R. § 2.104. If this request is denied in whole or in part, CLF is entitled to receive, at a minimum, (1) a detailed index/list of the records withheld, including the name of the record, the subject of the record, the author of the record, and the date of the record; and (2) EPA's basis for withholding the records. *Church of Scientology Int'l v. U.S. Dep't of Justice*, 30 F.3d 224, 228 (1st Cir. 1994); *Vaughn v. Rosen*, 484 F.2d 820, 823-28 (D.C. Cir. 1973), *cert. denied* 415 U.S. 977 (1974).

Additionally, because CLF works on behalf of the public interest and this FOIA request is made in furtherance of the public interest, CLF requests a waiver of any and all fees associated with the disclosure of records pursuant to this request. The FOIA and EPA's regulations provide that records will be furnished at reduced or no charge when disclosure "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. §552(a)(4)(A)(iii); 40 C.F.R. §2.107(l). CLF addresses in the following paragraphs the six factors that the FOIA officer will consider in determining whether CLF has met the first (disclosure is in the public interest) and second (not primarily for commercial interest of the requester) fee waiver requirements.

First fee waiver requirement:

- (i) The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote. 40 C.F.R. §2.107(l)(2)(i)

CLF seeks the information referred to in this request in order to better understand the factual and policy issues concerning stormwater pollution in and around the Mystic River and Island End River, on behalf of its approximately 4,000 members and the public. The requested records directly concern the operations and activities of USEPA in its role as the primary enforcer and administrator of the Clean Water Act in Massachusetts, in which role USEPA drafted the applicable NPDES permit(s) and maintains the records regarding permit applications and pollutant discharges from ExxonMobil's Everett Terminal into the Mystic and Island Rivers.

- (ii) The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. 40 C.F.R. §2.107(l)(2)(ii)

The records requested by CLF will provide CLF, its members, and the general public with an increased understanding of the NPDES permitting operations and activities of USEPA as they relate to permit applications and pollutant discharges from ExxonMobil's Everett Terminal into the Mystic and Island Rivers. Moreover, CLF specifically intends to publish EPA's response and disseminate the responsive documents to CLF's members and the general public.

- (iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. 40 C.F.R. §2.107(l)(2)(iii)

The records are requested by CLF on behalf of its approximately 4,000 members and the general public, which constitute a reasonably broad audience of persons. **CLF specifically intends to publish EPA's response and disseminate the responsive documents to CLF's members and the general public.**

- (iv) The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. 40 C.F.R. §2.107(l)(2)(iii)

The public's understanding of the factual and policy issues concerning stormwater pollution in and around the Mystic River and Island End River will be enhanced to a significant extent by



disclosure of the requested records regarding permit applications and pollutant discharges from ExxonMobil's Everett Terminal into the Mystic and Island Rivers.

Second fee waiver requirement:

- (i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. 40 C.F.R. §2.107(l)(3)(i)

CLF is a non-profit environmental organization with no commercial interests whatsoever.

- (ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." 40 C.F.R. §2.107(l)(3)(ii)

As CLF is a non-profit public interest environmental organization with no commercial interests whatsoever, CLF's primary (and only) interest in the requested disclosure is non-commercial and entirely in the public interest.

Consistent with the fee waiver provisions of the FOIA statute and EPA regulations, CLF seeks the information referred to in this request in order to better understand the factual and policy issues concerning stormwater and process water pollution in and around the Mystic River and Island End River and the operations and activities of the government to abate that pollution and protect those public waters, on behalf of CLF's members and the public. CLF has no commercial interest whatsoever that will be furthered by this disclosure. 40 C.F.R. §2.107(l)(2)-(3). Moreover, CLF intends to publish EPA's response and make the responsive documents available to CLF's members and the general public. Consequently, a fee waiver is appropriate under FOIA and EPA regulations.

CLF appreciates that this request potentially may involve a large volume of administrative material and is willing to discuss ways to streamline the response.

Please provide the requested documents to:

Zachary Knox Griefen
Environmental Enforcement Litigator
Conservation Law Foundation
15 East State St., Suite 4
Montpelier, VT 05602-3010
P: 802-223-5992, ext. 4011
E: zgriefen@clf.org



Please contact me if any further information is necessary. Thank you very much for your consideration and prompt response to this request.

Sincerely,

Zachary Knox Griefen
Environmental Enforcement Litigator
Conservation Law Foundation
15 East State St., Suite 4
Montpelier, VT 05602-3010
P: 802-223-5992, ext. 4011
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cc: Elizabeth B. Petersen, Kanner & Whiteley, LLC